(2016) 09 MP CK 0066

In the Madhya Pradesh High Court

Case No : W.P. No. 1158 Of 2007

Chet Ram Mishra — APPELLANT

Vs

State of M.P. — RESPONDENT

Date of Decision : 29-09-2016

Acts Referred:

Citation : (2017) 1 MPLJ 91

Hon'ble Judges : Mr. J.K. Maheshwari, J.

Bench : Single Bench

Advocate : Mr. Anil Sharma, Advocate, for the Petitioner; Mrs. Ami Prabal, Deputy Advocate General, for the Respondents

Final Decision : Allowed

Judgement

J.K. Maheshwari J. - This writ petition under Article 226 of the Constitution of India has been filed by the petitioner seeking direction to the respondents to make the payment of gratuity in full as well as leave encashment for 240 days and further direction to pay full pension along with interest @ 12% per annum. By amendment, a relief has also been added that the order dated 1.3.2011 contained in Annexure P/5 may be quashed and the respondents be directed to count the services rendered by the petitioner in government aided private school for the period from 16.10.1969 to 6.5.1985 for the purpose of pension and to extend all consequential benefits, after fixation.

2. The facts unfolded are that the petitioner was appointed in Guru Vashisht Higher Secondary School, Jawasa (Jagannath Ka Pura), District Bhind on 15.10.1969. In para 5.9 of the petition, it is stated that the said school is the government aided private school. As per order dated 6.5.1985, it has been taken over by the School Education Department absorbing the services of the petitioner as Principal by subsequent order dated 11.2.1988. The petitioner attained the age of superannuation on 31.5.2005. After retirement, all the formalities have been completed by him but the benefit of pension adding the period of service rendered prior to absorption, and other retiral benefits were not extended

despite various representations. However, this petition has been filed seeking appropriate directions.

3. Respondent/State has filed their reply inter alia contending that the claim with respect to gratuity has been duly considered and paid to the petitioner as per his entitlement. So far as claim with regard to leave encashment is concerned, he is entitled to get encashment of 148 days, which has also been paid. In respect of claim of counting of services rendered by the petitioner in the government aided private institution, it is urged that as per circular dated 15.1.1972, the schools which were run by Janpad Panchayat or Nagar Palika, and taken over by the State Government, the services of employees of such schools may be counted for the purpose of pension but the teachers of government aided private institutions are not entitled to get such benefits. The circulars indicating the aforesaid fact have also been filed as Annexures R/2 and R/3. However, in view of aforesaid circulars, it is contended that this petition may be dismissed at the threshold because the petitioner is not entitled for counting the services rendered by him in an aided institution, prior to the date of absorption.

4. Petitioner has filed rejoinder inter alia contending that the condition as stipulated in the circular dated 15.1.1972 has been complied with, which would reveal from the documents, Annexures P/9A to P/9D. It is further contended that the School Education Department as per order dated 27.8.1982 has clarified the circular dated 15.1.1972 and by the said clarification, the aided private institutions which were absorbed have also been included within the purview of the circular dated 15.1.1972. However, in the context of the said circular, the petitioner is entitled to get such benefits. The petitioner, by filing an application (I.A.No.5442/2016) produced a list of the persons who were working in the aided institutions absorbed by the government and for the purpose of the pension the services of those employees rendered by them have been counted for the purpose of pension by the Government. By producing the order passed by the Principal Seat in Writ Petition No. 4699/2012 (Smt. Mithlosh Mishra v. State of MP and four others), decided on 16.1.2013, it has been contended that the aforesaid issue has been dealt with and the Court relying upon the orders passed in Writ Petition No.1028/2004 (Chetan Das Bairagi v. State of Madhya Pradesh and two others), decided on 27.10.2010; Writ Petition No. 21055/2003 (Smt. Prabha Devi v. State of Madhya Pradesh and two others), decided on 8.1.2004; and, C.A. Bhakhare v. State of MP and others (1987 MPLJ 509) held that the services of the petitioner during the period in which he was working in government aided private institutions deserves to be counted for the purpose of the pension after absorption of the said institutions along with the staff. Thereafter, the petitioner has filed writ appeal No. 201/2013 claiming higher rate of interest as awarded by learned Single Judge, which is complied by the State Government. However, it is urged that in the aforesaid facts, there is no reason to take a different view in the present case and the reliefs as prayed by the petitioner may be allowed.

5. After hearing learned counsel for the petitioner and learned Deputy Advocate General, looking to the facts of the present case, it is not in dispute that the petitioner was appointed on 15.10.1969 in the government aided private school, namely, Guru Vashisht Higher Secondary School, Jawasa (Jagannath Ka Pura), District Bhind. It is also not in dispute that the said school was absorbed along with the staff on 6.5.1985 by the State of Madhya Pradesh, School Education Department. It is also not in dispute that the petitioner was appointed as Principal as per order dated 11.2.1988 and attained the age of superannuation on 31.5.2005. However, the question survives for determination is whether the services rendered by the petitioner from the date of joining, i.e., 16.10.1969 till the date of absorption, i.e., 6.5.1985 can be counted for the purpose of pension and other retiral benefits and direction can be given to the respondents to pay the retiral benefits by adding the said services to the petitioner.

6. Looking to the facts which are not in dispute and the circular dated 15.1.1972, it is apparent that if the schools run by the local bodies and authorities are absorbed by the government, their employees are entitled to get benefit of the services rendered in the schools run by said local bodies and authorities. The said circular dated 15.1.1972 has been modified by the circular dated 27.8.1982, by which it is made clear that as per decision of the State Government, the employees of Janpad Sabha, local bodies and authorities and also that of the government aided private schools, if absorbed, would be entitled to get pension in terms of the circular dated 15.1.1972. The said document filed along with the rejoinder has not been disputed by filing any additional return by the respondents. In addition to the aforesaid, the issue cropped up for determination in this case has been duly considered by the coordinate Bench of this Court in Writ Petition No. 21055/2003 (Smt. Prabha Devi v. State of Madhya Pradesh and two others), decided on 8.1.2004. In the said case, the Court has observed as under:-

"By this petition, the petitioner has prayed for grant of benefit of period of service commencing 24.6.1963 to 31.12.1978 for the purpose of extension of benefit of family pension.

It is submitted by Mrs. Gour, learned counsel for the petitioner that the controversy is covered by the decision rendered by the Tribunal in OA No.1301/1999 whereby the Tribunal allowed the similar prayer holding that the service for the said period would be computed for the purpose of pension.

It is very fairly stated by Mr. Rahul Jain, learned counsel for the State that the order of the Tribunal has been respected by the State Government and similar orders have also been passed by this Court. Keeping in view the principles of parity, it is directed that the period in question shall be counted towards the service of the deceased employee for the purpose of grant of family pension to the petitioner. As the Tribunal granted the interest @ 12% to the petitioner, the same shall be granted to the petitioner. The aforesaid order is passed on the anvil of parity. The exercise in this regard shall be completed within two months from the date of the receipt of the order passed today. With the aforesaid direction, the writ petition stands disposed of. There shall be no order as to costs.

c.c. as per rules."

7. Relying upon the said order in Writ Petition No. 4699/2012 (Smt. Mithlosh Mishra v. State of MP and four others), decided on 16.1.2013, reiterating the same principles directions have been issued to count the services of the petitioner rendered in the government aided private institutions prior to absorption for the purpose of pension.

8. However, in the light of aforesaid judgment of the coordinate Bench and looking to the circulars of the State Government dated 15.1.1972 and 27.8.1982, which are expressive and fully cover up the issue as involved in the present case, in my considered opinion, the petitioner is entitled to count the services rendered by him w.e.f. 16.10.1969, i.e., the date of joining in the government aided private school till the date of absorption, i.e., 6.5.1985, for the purpose of pension. It is hereby further observed that after adding the said services, the gratuity, leave encashment and other retiral dues may be settled as per new fixation and pension be paid to the petitioner accordingly.

9. At this stage, it has been brought to the notice of the Court that as per the order passed by the Court, 90% pension has been paid without adding the aforesaid period, however, appropriate direction may also be issued to pay the arrears of the pension after counting the services rendered by the petitioner in the government aided private school.

10. In view of the foregoing discussion, in my considered opinion, this petition deserves to be allowed. The petitioner is entitled for counting the services from 16.10.1969 till 6.5.1985 rendered by him in the government aided private institution prior to absorption of the school for the purpose of determination of the pension. After counting the said period, the pension of the petitioner shall be determined and the post retiral dues shall also be settled accordingly, which includes payment of gratuity, leave encashment. It is further directed that after the date of retirement 90% anticipatory pension was paid to the petitioner, however, he would be entitled for full pension for such period and arrears if any be also settled and paid to him. The aforesaid exercise be completed by the respondents within a period of four months and all the benefits, i.e., post retiral dues, gratuity, leave encashment, arrears of pension be paid along with the interest @ 7.5% per annum from the date it has fallen due to the petitioner till realisation. In the facts, there shall be no order as to costs.